

REMARKS

Status of the Drawings and the Specification

The amendments to the specification presented above are believed to overcome the currently pending objections to the drawings. Specifically, the specification has been amended to add the reference numeral 29, which appears in Fig. 1. No new matter has been added by this amendment.

Status of the Claims

Claims 1-17 are currently pending.

Claim 1 is currently objected to due to an informality. The word "to" has been added between the words "attached" and "the" as requested. The Applicant respectfully submits that this objection has been overcome.

Claim 7 is currently objected to regarding the use of the term "the heads." Claim 7 has been amended to recite "second ends" instead of "the heads." Applicant respectfully submits that there is proper antecedent basis for the term "second ends" in claim 5, from which claim 7 depends. The Applicant respectfully submits that this objection has been overcome.

Claims 1-3, 5-13 and 17 are currently rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent No. 5,515,655 to Hoffman (hereinafter the "Hoffman" reference).

Claims 14 and 15 are currently rejected under 35 U.S.C. §103(a) as allegedly being rendered obvious by Hoffman.

Claim 4 is currently rejected under 35 U.S.C. §103(a) as allegedly being rendered obvious by Hoffman in view of U.S. Des. Patent No. 293,934 to Lambert *et al.* (hereinafter the "Lambert" reference). Claim 4 is also currently rejected under 35 U.S.C. §103(a) as allegedly being rendered obvious by German reference DE 198 36 369 C1 to Krinner *et al.* (hereinafter the "Krinner" reference) in view of U.S. Patent No. 6,412,235 to Pylant (hereinafter the "Pylant" reference), in further view of Lambert.

Claims 1, 3, 5-8 and 12-15 are currently rejected under 35 U.S.C. §103(a) as allegedly being rendered obvious by Krinner in view of Pylant.

Claims 2, 16 and 17 are currently rejected under 35 U.S.C. §103(a) as allegedly being rendered obvious by Krinner in view of Pylant, in further view of U.S. Patent No. 6,517,442 to Post (hereinafter the "Post" reference) and U.S. Patent No. 4,022,437 (hereinafter the "French" reference).

The Applicants respectfully submit that the pending rejections have been overcome by the amendments presented herein, and that the pending rejections do not apply to the newly presented claims. The Applicants respectfully traverse the pending rejections to the extent that they might be argued to apply to the claims as currently amended, and present the following remarks in support of the traverse.

I. Hoffman

A. Claims 1-3, 5-13 and 17

Claims 1-3, 5-13 and 17 are currently rejected under 35 U.S.C. §102(b) as allegedly being anticipated by the Hoffman reference. Hoffman, however, does not disclose each and every element of independent claims 1 and 5. Specifically, the Hoffman reference does not disclose at least two tubes having substantially hollow ends. In contrast, independent claim 1 as currently amended recites "at least two tubes having substantially hollow ends that project into the subsoil." Similarly, independent claim 5 recites "at least two tubes, each having a first, substantially hollow end."

The Hoffman reference discloses a load bearing member 16 that is "formed as first and second telescopically engaged members or sections, 28 and 30 respectively, that slide longitudinally one inside another." Hoffman at Col. 6 lines 6-8. "The second member 30 defines the second end 20 of the load bearing member 16 which is engageable in the ground. The opposite end 36 of the second member 30 is disposed above ground." Hoffman at Col. 6 lines 47-52. While Hoffman discloses that the second member 30 can be a pipe, Hoffman does not disclose that the second end 20 of the load bearing member 16 is hollow.

In fact, Hoffman explicitly discloses that “The second end 20 is closed by flat plate 38 to prevent entry of earth therein.” Hoffman at Col. 8 lines 8-10. Thus, the Hoffman reference explicitly discloses a closed end of the load bearing member, and teaches away from use of a hollow end.

Because the Hoffman reference does not disclose each and every element of independent claims 1 and 5, the Applicant respectfully submits that Hoffman does not anticipate claims 1 and 5, or any of the claims that depend therefrom, including claims 2-3, 6-13 and 17. Applicant respectfully requests that the pending rejection of claims 1 and 5 in view of Hoffman be withdrawn. The Applicant respectfully submits that the remaining specific rejections under 35 U.S.C. §102(b) with respect to Hoffman have been rendered moot. The Applicant also respectfully submits that the obviousness rejection of claim 4, which depends from claim 1, based upon the Hoffman reference is also moot.

B. Claims 14 and 15

Claims 14 and 15 are currently rejected under 35 U.S.C. §103(a) as allegedly being rendered obvious by Hoffman. As discussed above, however, the Hoffman reference does not disclose at least two tubes having substantially hollow ends. In contrast, independent claim 14 recites “rotating at least two tubes into the subsoil, wherein each of said tubes is provided with a substantially hollow end on the side rotated into the subsoil.” Therefore, the Hoffman reference does not disclose each and every element of independent claim 14, and cannot render independent claim 14 obvious because Hoffman teaches away from the claimed element. MPEP §2141.02.

Because the Hoffman reference does not render independent claim 14 obvious, the Applicant respectfully submits that Hoffman also does not render obvious claim 15, which depends from claim 14. Applicant respectfully requests that the pending rejection of claims 14 and 15 in view of Hoffman be withdrawn.

II. Krinner in view of Pylant

Claims 1, 3, 5-8 and 12-15 are currently rejected under 35 U.S.C. §103(a) as allegedly being rendered obvious by Krinner in view of Pylant. However, Krinner

and Pylant, either alone or in combination, do not disclose each and every element of independent claims 1, 5 and 14. Specifically, the Krinner and Pylant references do not disclose at least two tubes having substantially hollow ends. As discussed above, independent claim 1 as currently amended recites “at least two tubes having substantially hollow ends that project into the subsoil.” Similarly, independent claim 5 recites “at least two tubes, each having a first, substantially hollow end.” Finally, independent claim 14 recites “rotating at least two tubes into the subsoil, wherein each of said tubes is provided with a substantially hollow end on the side rotated into the subsoil.”

The September 2, 2008 Office Action admits that the Krinner reference “does not teach the end of the tube being hollow.” September 2, 2008 Office Action at p. 8. The September 2, 2008 Office Action then asserts that the Pylant reference disclose a tube having a hollow end. The Applicant respectfully disagrees with this assertion. Pylant discloses a device 10 that includes “a tip portion 11, flightings 12, a shallow-sloped conical portion 13, and a cylindrical upper housing portion 14 for receiving the above ground upright.” Pylant at Col. 2 lines 45-53. While Pylant discloses that the conical portion 13 of the device 10 can be hollow, (Pylant at Col. 5 lines 15-19), Applicant respectfully submits that it is tip portion 11 that corresponds to the end of the device 10 (Pylant Figure 1A). The Pylant reference does not disclose that tip portion 11 can be hollow. Instead, Pylant discloses that “[t]he tip portion may be constructed by machining a point on a 3/4-inch steel rod. In addition, one or two opposing vertical notches 15 are placed in the tip at the leading end to initially disrupt the soil in dense soil conditions, and to enable the tip to break up small rocks or dislodge them as the device penetrates the soil.” Pylant at Col. 3 lines 57-62. Thus, Krinner in view of Pylant does not disclose at least two tubes having substantially hollow ends, and there is no basis for modifying Krinner in view of Pylant to incorporate such a structure.

Because Krinner in view of Pylant does not disclose each and every element of independent claims 1, 5, and 14, the Applicant respectfully submits that Krinner in view of Pylant does not render obvious claims 1, 5 and 14, or any of the claims that depend therefrom. Applicant respectfully requests that the pending rejection of

claims 1, 3, 5-8 and 12-15 based on Krinner in view of Pylant be withdrawn. Applicant also respectfully submits that the obviousness rejections of claims 2, 4, 16 and 17 based upon combinations of Krinner in view of Pylant in further view of additional references have been rendered moot.


CONCLUSION

In view of the amendments and remarks presented above, the Applicant respectfully submits that claims 1-17 as currently presented are in a condition for allowance.

Applicant believes that no fee is currently due in conjunction with this submission. The Commissioner is, however, hereby authorized to charge any fees that may be necessary, or credit any overpayment, to Deposit Account No. 18-2284, in the name of DLA Piper US LLP.

Respectfully submitted,

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